

2014

Terms of Reference for the Independent Administrator



MSG Approved

DRAFT

4/23/2014

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1. BACKGROUND

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes transparency and accountability in the oil, gas and mining sectors. It has a robust yet flexible methodology for disclosing and reconciling company payments and government revenues in implementing countries. The EITI process may be extended and adapted to meet the information needs of stakeholders.

EITI implementation has two core components:

- **Transparency:** oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled by an Independent Administrator, and published in annual EITI Reports alongside contextual and other information about the extractive sector.
- **Accountability:** a multi-stakeholder group with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report, and promote the integration of EITI into broader transparency efforts in that country.

It is a requirement that the Independent Administrator is found by the multi-stakeholder group to be credible, trustworthy and technically competent, and can operate without conflicts of interest (Requirement 5.1). The Independent Administrator's report will be submitted to the Multi-Stakeholder Group (MSG) for approval and made publically available.

Seven requirements for implementing countries are set out in the EITI Standard.¹ Additional information is available online at: www.eiti.org.

These Terms of Reference include "agreed upon procedures" for EITI reporting (see sections 3, 4, and 5) in accordance with EITI Requirement 5.2. The EITI International Board (Board) has developed these procedures to promote greater consistency and reliability in EITI reporting. The Board recommends that the process rely as much as possible on existing procedures and institutions. The EITI process can be used to complement, assess, and improve existing reporting and auditing systems. In this way, the EITI process has the potential to generate important recommendations to strengthen other oversight systems.

EITI Implementation in the United States (USEITI)

In 2011, President Obama announced the U.S. government's intention to implement EITI as a signature effort of the U.S. National Action Plan for the Open Government Partnership. The President named the Secretary of the Department of the Interior (DOI) as the senior U.S. official to oversee implementation, and the Secretary committed to work alongside civil society and industry to carry out USEITI. Within DOI, the Office of Natural Resources (ONRR)² provides direct support for USEITI implementation, coordinates the efforts to convene the MSG, and manages the efforts of the USEITI Secretariat. ONRR, with advice from the MSG, will manage the USEITI Independent Administrator contract.

¹ <http://eiti.org/document/standard>

² ONRR is responsible for the management of the majority of revenues associated with Federal offshore and Federal and American Indian onshore mineral leases, as well as revenues received as a result of offshore renewable energy development. This revenue management effort is one of the Federal government's greatest sources of non-tax revenues. Additional information can be found online at www.ONRR.gov

The U.S. can benefit from EITI implementation in several ways. First, EITI can help to build more transparent relationships between industry and the public and foster greater public trust around resource governance. Additionally, EITI provides an opportunity for the U.S. to lead by example in its efforts to promote global institutions that are more transparent, effective, and accountable. USEITI offers stakeholders a means to influence how government and industry report extractive revenues.

The scope of industries and payments to be included in USEITI and thresholds for reporting was determined by the MSG, comprised of representatives from government, companies, and civil society. The MSG ensured that the USEITI framework is tailored to U.S. laws and regulations, and that it is implementable by government and industry. Additional information about the scope of USEITI implementation is available in the USEITI Candidacy Application. The Country Workplan for implementing USEITI is included in the Application as Annex 2. The document is available online at <http://www.doi.gov/eiti/upload/USEITI-Candidacy-Application-MSG-Approved.pdf>

2. OBJECTIVE

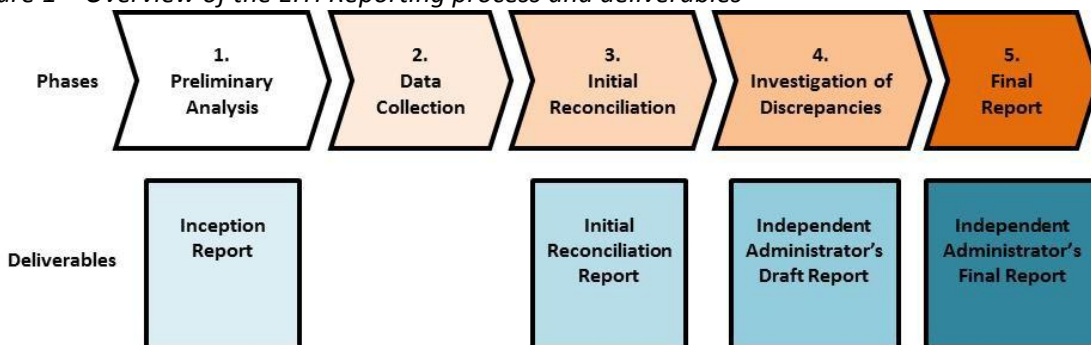
On behalf of the U.S. and the USEITI MSG, ONRR seeks a competent and credible firm to provide Independent Administrator services in accordance with the EITI Standard. The objective of the assignment is to:

- Produce annual USEITI Reports: the first in 2015 based on data no earlier than 2013 and the second in 2016 based on data no earlier than 2014 to be specified in accordance with the EITI Standard and sections 3, 4, and 5 below.

3. SCOPE OF SERVICES AND EXPECTED DELIVERABLES

The work of the Independent Administrator has five phases (see Figure 1). The Independent Administrator's responsibilities in each phase are elaborated in the sections below.

Figure 1 – Overview of the EITI Reporting process and deliverables



The USEITI Report will cover the scope as outlined in the USEITI Candidacy Application.³ The MSG's expectation is that during the preliminary analysis period, the Independent Administrator will confirm the scope of the USEITI Report. Following the review of the Inception Report, the MSG will confer with the Independent Administrator and may adjust the scope of the USEITI Report. While it is anticipated

³Available at <http://www.doi.gov/eiti/upload/USEITI-Candidacy-Application-MSG-Approved.pdf>

the initial report and/or reports will be primarily focused on Federal data, there is the potential for States or Tribes to opt-in which would result in additional data collection and reconciliation.

Phase 1 – Preliminary Analysis and Inception Report

The objective of the first phase of work is to clearly establish the scope of the USEITI reporting process, the reporting templates, data collection procedures, and the schedule for publishing the USEITI Report. It is imperative that the scope of USEITI reporting is clearly defined and in line with both the EITI Standard and with the MSG's agreed objectives and expectations for the USEITI process. The findings from the first phase should be documented in an inception report (see 1.1-1.9 below). The Independent Administrator is expected to undertake the following:

1.1 The Independent Administrator will review the relevant background information, including the governance arrangements and tax policies in the extractive industries, the findings from any preliminary scoping work, and for the second USEITI Report, the conclusions and recommendations from previous EITI Reports and Validations (A list of relevant documentation is provided as Annex 1).

1.2 The Independent Administrator will work with the MSG to agree on the procedures for incorporating and analyzing contextual and other non-revenue information in the USEITI Report. The procedures should ensure that information is clearly sourced and attributed.

1.3 The Independent Administrator will review the payments and revenues to be covered in the USEITI Report as proposed by the MSG in the Candidacy Application and in accordance with EITI Requirement 4. The inception report should clearly indicate the MSG's decisions on:

- The definition of materiality and thresholds, and the resulting revenue streams to be included in accordance with Requirement 4.1(b).
- If relevant, the sale of the state's share of production or other revenues collected in-kind in accordance with Requirement 4.1(c).
- If relevant, the coverage of infrastructure provisions and barter arrangements in accordance with Requirement 4.1(d).
- The coverage of social expenditure in accordance with Requirement 4.1(e).
- The coverage of transportation revenues in accordance with Requirement 4.1(f).
- The level and type of disaggregation of the USEITI Report in accordance with Requirement 5.2(e).

1.4 The Independent Administrator will review the companies and government entities that are required to report for purposes of reconciliation as defined by the MSG in the Candidacy Application and in accordance with EITI Requirement 4.2. The inception report should:

- Identify and list the companies that make material payments to the government and will be required to report in accordance with Requirement 4.2(a).
- Identify and list the government entities that receive material payments and will be required to report in accordance with Requirement 4.2(a).
- Identify any barriers to full government disclosure of total revenues received from each of the benefit streams agreed in the scope of the USEITI report, including revenues that fall below agreed materiality thresholds (Requirement 4.2(b)).

- Confirm the MSG’s position of the materiality and inclusion of sub-national payments in accordance with Requirement 4.2(d).
- Confirm the MSG’s position on the materiality and inclusion of sub-national transfers in accordance with Requirement 4.2(e).

1.5 The Independent Administrator will provide a draft reporting template to the MSG based on the agreed benefit streams to be reported and the reporting entities (1.3 – 1.4 above). Sample templates are available from the International Secretariat. It is recommended that the templates include a provision requiring companies to report “any other material payments to government entities” above an agreed threshold.

1.6 The Independent Administrator will provide advice to the MSG in examining the audit and assurance procedures in companies and government entities participating in the USEITI reporting process in accordance with Requirement 5.2(b). This includes examining the relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards.

1.7 The Independent Administrator will provide advice to the MSG on what information the MSG should require to be provided to the Independent Administrator by the participating companies and government entities to assure the credibility of the data in accordance with Requirement 5.2(c). The Independent Administrator will then employ his /her professional judgment to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator will document the options considered and the rationale for the assurances to be provided. The Independent Administrator will exercise judgment and apply appropriate international professional standards⁴ in developing a procedure that provides a sufficient basis for a comprehensive and reliable USEITI Report.

1.8 The Independent Administrator will provide advice to the MSG on appropriate provisions relating to safeguarding confidential information.

1.9 The Independent Administrator will document the results from the inception phase in an inception report for consideration by the MSG addressing 1.1 – 1.8 above. Where necessary the inception report should highlight any unresolved issues or potential barriers to effective implementation, and possible remedies for consideration by the MSG.

Phase 2 – Data Collection

2.1 The Independent Administrator will distribute the reporting templates and collect the data and associated supporting documentation, as well as any other contextual or other information requested to be collected by the MSG, directly from the participating reporting entities. The Government and Industry Sectors will provide contact details for the reporting entities and assist the Independent Administrator in encouraging all reporting entities to participate fully.

⁴ For example, ISA 505 relative to external confirmations; ISA 530 relative to audit sampling; ISA 500 relative to audit evidence; ISRS 44000 relative to the engagement to perform agreed-upon procedures regarding financial information and 4410 relative to compilation engagements.

2.2 At the direction of the MSG, the Independent Administrator will provide advice on ensuring that the request for data includes appropriate guidance to the reporting entities, and on where to seek additional information and support.

2.3 The Independent Administrator is mandated to contact the reporting entities directly to clarify any information gaps or discrepancies within the submitted information.

Phase 3 – Initial Reconciliation and Initial Reconciliation Report

3.1 The Independent Administrator will manage data provided by the reporting entities.

3.2 The Independent Administrator will comprehensively reconcile the information disclosed by the reporting entities and prepare an initial reconciliation report based on the reported data and the agreed scope for consideration by the MSG. The report will identify all discrepancies (including offsetting discrepancies) and distinguish those discrepancies above the margin of error established by the MSG.

Phase 4 – Investigation of Discrepancies and Draft Independent Administrator’s Report

4.1 The Independent Administrator is mandated to contact the reporting entities in seeking to clarify and resolve any discrepancies above the margin of error established by the MSG.

4.2 The Independent Administrator will prepare a draft Independent Administrator’s Report that comprehensively reconciles the information disclosed by the reporting entities and identifies the result of their investigation and resolution of discrepancies.

4.3 With respect to contextual information and other data collected by the Independent Administrator or provided to the Independent Administrator by the MSG, the Independent Administrator will compile the data and prepare an initial report based on the current EITI requirements. The report will include:

- A description of the legal framework and fiscal regime governing the extractive industries (Requirement 3.2).
- An overview of the extractive industries, including any significant exploration activities (Requirement 3.3).
- Where available, information about the contribution of the extractive industries to the economy for the reporting period covered by the EITI Report (Requirement 3.4).
- Production data for the reporting period year covered by the EITI Report (Requirement 3.5).
- Distribution of revenues from the extractive industries (Requirement 3.7).
- Any further information requested by the MSG on revenue management and expenditures (Requirement 3.8).
- Information on the licensing process and register (Requirement 3.9) and the allocation of licenses (Requirement 3.10).
- Any information requested by the MSG on beneficial ownership (Requirement 3.11).
- Any information requested by the MSG on contracts (Requirement 3.12).
- The taxes and revenues to be covered in the EITI Report (Requirement 4.1).
- List of reporting entities (companies and government agencies) (Requirement 4.2).
- An overview of the potential materiality and inclusion of sub-national payments (Requirement 4.2(d)).
- Any other contextual information that the MSG has requested or provided for inclusion in the report.

4.4 In addition, the draft Independent Administrator’s report will:

- Describe the methodology adopted for the reconciliation of company payments and government revenues, and ensure the auditing standards are consistent with the EITI requirements.
- Include a description of each revenue stream, related materiality definitions and thresholds (Requirement 4.1).
- Include an assessment from the Independent Administrator on the comprehensiveness and reliability of the data presented, including an informative summary of the work performed by the Independent Administrator, an assessment and gap analysis of sub-national data, and the limitations of the assessment provided.
- Based on the government's disclosure of total revenues as per Requirement 4.2(b), indicate the coverage of the reconciliation exercise.
- Include an assessment of whether all companies and government entities within the agreed scope of the USEITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the USEITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report (Requirement 5.3(d)).
- Document whether the participating companies and government entities had their financial statements audited in the financial year(s) covered by the USEITI Report. Any gaps or weaknesses must be disclosed. Where audited financial statements are publicly available, it is recommended that the USEITI Report advise readers on how to access this information (Requirement 5.3(e)).

4.5 The Independent Administrator will make recommendations for strengthening the reporting process in the future, including any recommendations regarding audit practices and potential reforms to bring them in line with international standards. Beginning with the second report, the Independent Administrator will comment on the progress in implementing previously recommended corrective actions and reforms (Requirement 5.3f)).

4.6 The Independent Administrator will make recommendations on strengthening the template Terms of Reference for Independent Administrator services in accordance with the EITI Standard for the attention of the MSG.

Phase 5 – Final Independent Administrator’s Report

5.1 The Independent Administrator will produce the final USEITI report in electronic and hard copy formats for distribution as agreed to by the MSG.

5.2 The Independent Administrator will provide files for all data in a searchable, sortable and machine-readable format. These files shall be accompanied by comprehensive documentation that would allow any third party to easily understand and use these data files, to include description of data types, the meaning of data categories and available values.

5.3 Following approval by the MSG, the Independent Administrator is mandated to submit summary data from the USEITI Report electronically to the International Secretariat according to the standardized reporting format available from the International Secretariat (Requirement 5.3(b)).

5.4 The Independent Administrator will publish and make public the final report only upon the instruction of the MSG. The MSG will endorse the report prior to its publication.

4. QUALIFICATION REQUIREMENTS

The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards (requirement 5.1). It is a requirement that the Independent Administrator is perceived by the MSG to be credible, trustworthy and technically competent. Bidders must follow (and show how they will apply) the appropriate professional standards for the reconciliation and agreed-upon-procedures work in preparing their report. The Independent Administrator must be able to pass a Federal Background Investigation which includes having lived in the U.S. for at least 3 years. The Independent Administrator will also need to demonstrate experience in:

Data management and communication

- Developing management tools needed for reconciling large volumes of data and storage of all historical data
- Managing, analyzing, and translating complex and often “dry” financial data into easily understandable, compelling, and usable formats for the public. The public may include the general public, non-profits, community groups, local governments, state governments, and small to large companies
- Using state of the art data processing tools to ensure that the financial reconciliation is performed in the most efficient and effective manner (e.g., good properties of distributed systems: reliability, scalability, availability, etc.) and that data and source documents remain safeguarded
- Developing, implementing and maintaining quality assurance, project and system processing procedures
- Developing, maintaining, upgrading, and administering computerized applications
- Designing and developing user-facing websites that explain complex information in engaging ways
- Developing lightweight web applications that use modern, standards-compliant technologies to share and visualize data
- Using and contributing to open source code and frameworks that relate to data wrangling, user-facing interaction and visualization

Open government initiatives

- Planning, implementing, and assessing open government initiatives
- Using applied research and experience working directly with regional, national and local institutions to leverage existing and relevant publicly sourced narrative pertaining to the extractives sector
- Working with multi-stakeholder or multi-sector bodies or committees with diverse interests who will be integral to conducting USEITI work
- Applying methods and theory of public involvement

Accounting

- Complying with national accounting standards, where national standards exist, or international standards where they do not. Standards will range from promulgations of the American Institute

of Certified Public Accountants (AICPA) to the Federal Accounting Standards Advisory Board (FASAB), as well as Generally Accepted Auditing Standards (GAAS) for companies and Generally Accepted Government Auditing Standards for the federal government (GAGAS), Public Company Accounting Oversight Board (PCAOB) along with other applicable guidance from U.S. Department of the Treasury, Office of Management and Budget (OMB) and U.S. Government Accountability Office (GAO)

- Reconciling differences in financial reporting between different sources, ideally involving large scale databases and extractive industries financial reporting of revenue obligations or payments within the legal regulatory and policy frameworks similar and relevant to the USEITI requirements

Natural resource governance and legal framework

- Documenting government policy specific to oil, gas and minerals, or similar experience documenting the laws, regulations and policies that govern government operations in the US and internationally
- Analyzing and interpreting mineral, oil and gas leasing, royalty contracts, and the legal and regulatory interpretations of those agreements
- Managing and interpreting policies with respect to leasing, production and revenue reporting for use of the natural resource attributes of the federal government's assets, as well as taxation of the extractive industries
- Documenting the government's policy on contracts and licenses that govern the exploration and exploitation of oil, gas and minerals which would include identifying relevant laws, regulations, and financial systems that govern the extractive sector and on access to lease terms for past lease sales

Relevant disciplines and areas of expertise

- US governance of natural resources and transparency issues
- Regional development, domestic natural resource markets and energy production and use
- Planning and public administration specializing in taxes, revenue and natural resource policy
- Accounting and legal expertise in natural resource governance and accounting
- Labor and workforce assessment
- Sustainable development, democratic natural resource governance and public involvement
- Public and private organizations specializing in oil, mining, gas, renewables, etc.
- Professional certifications in enterprise database design, implementation, and maintenance

In order to ensure the quality and independence of the exercise, Independent Administrators are required, in their proposal, to disclose any actual or potential conflicts of interest, together with commentary on how any such conflict can be avoided.

5. OTHER INDEPENDENT ADMINISTRATOR RESPONSIBILITIES

Program Management Plan

At least ten (10) business days prior to the post award conference, the Independent Administrator shall provide to ONRR an overall program management plan for completing the requirements of the Terms of Reference.

Post Award Conference

The post award conference will be held in-person with the contract manager, relevant staff, and ONRR management at the ONRR offices in Washington, DC within 20 business days of the fully executed contract.

Monthly Status Reports

The Monthly Status Reports must document the efforts preformed in the completion of each phase. The Independent Administrator will draft the initial monthly status report template to be agreed upon at the post award conference. The report shall include but is not be limited to the following requirements:

- Project status, to include objectives met, work completed and work outstanding
- Notable achievements
- Issues or obstacles impeding progress and recommended solutions
- Description of work completed and plans for next month
- Summarize the efforts of each phase in the Terms of Reference
- Update on project personnel/staffing with contact information
- Budget update

Annual Reports

The Independent Administrator shall provide an annual report no later than 60 days following the delivery of the annual USEITI Report. The report will summarize objectives achieved, significant issues, problems, and recommendations to improve the process in the future.

6. TIME SCHEDULE FOR DELIVERABLES

The government anticipates award of a firm fixed price contract. The term of the contract will have a base year and four (4) option years from the date of award. The contractor shall complete the work associated with each task in accordance with the proposed schedule below:

Milestone	Date
Signing of contract	August 2014
Inception period	September 2014-November 2014
Inception report	December 2014
Data collection & initial reconciliation	January 2015-May 2015
Initial reconciliation report	July 2015
Draft USEITI Report	September 2015
Final USEITI Report	December 2015
<i>Interim Milestones and Dates TBD</i>	
2nd USEITI Report	December 2016

ANNEX ONE – SUPPORTING DOCUMENTATION

EITI REQUIREMENTS

- WWW.EITI.ORG
- [THE INTERNATIONAL EITI STANDARD](#)

USEITI IMPLEMENTATION

- WWW.DOI.GOV/EITI
- [USEITI CANDIDACY APPLICATION](#)
- [USEITI Multi-Stakeholder Group Meeting Agendas, Summaries, and Materials](#)
- [FEBRUARY 13, 2013 MSG MEETING MINUTES](#)
- [APRIL 11, 2013 MSG MEETING MINUTES](#)
- [MAY 1-2, 2013 MSG MEETING MINUTES](#)
- [JUNE 12-13, 2013 MSG MEETING MINUTES](#)
- [JULY 23-24, 2013 MSG MEETING MINUTES](#)
- [SEPTEMBER 10, 2013 MSG MEETING MINUTES](#)
- [NOVEMBER 5-6, 2013 MSG MEETING MINUTES](#)
- [DECEMBER 11-12, 2013 MSG MEETING MINUTES](#)

ANNEX TWO – PROCUREMENT PROCESS AND TIMELINE

- Contracting Officers Representative (COR) provides draft information for the Request for Information (RFI) to the Contracting Officer (CO)	02/15/14
- CO finalizes RFI and Issues RFI on Fed Biz Ops and GSA E-Buy concurrently	02/18/14
- CO, COR, and possibly other Program Personnel Conduct Market Research	02/28/14
- CO Receives Responses from Vendors Regarding RFI	03/07/14
- CO Forwards Responses to COR for Review and CO Reviews Responses simultaneously.	03/11/14
- CO receives Market Research Documentation from COR including information received from vendors in response to the RFI.	03/11/14
- CO makes the determination whether or not there are capable vendors on GSA Schedule 520, Category 7	03/13/14
■ If there are not capable vendors on GSA Schedule 520, but there are at least two capable small businesses that respond to the RFI that was sent out on FBO, the CO must set aside the requirement for small business.	
■ If it is determined that there are capable vendors on GSA Schedule 520, the CO will compete the requirement to both large and small businesses on Schedule 520 per the rules of "Fair Opportunity".	
- COR and Program office submit Final Requirements Package to CO, which includes:	03/24/14
Performance Work Statement (PWS)	
Recommended Evaluation Factors	
Independent Government Cost Estimate (IGCE)	
Quality Assurance Surveillance Plan (QASP)	
Purchase Requisition	
- CO finalizes any necessary Determination and Findings, e.g. inclusion of Option Periods, etc. And includes receiving any required approvals above the CO Level .	03/28/14
- CO creates the Request for Quote (RFQ) which includes the PWS and all appropriate FAR clauses, Agency clauses, local clauses, instructions to the contractors, and evaluation factors that contractors must address in their quote.	04/11/14
- CO sends RFQ to the DOI Solicitor's Office for legal review.	04/11/14
- CO issues the RFQ to prospective offerors.	04/25/14
- CO receives the Quotes and sends the technical part of the quote to the COR for the Technical Evaluation.	05/26/14
- CO completes the Price Analysis.	06/09/14
- COR/Program Office complete Technical Evaluation of the Proposals	06/23/14
- CO conducts analysis using Price and Technical Evaluations to determine the successful offeror.	07/03/14
- CO finalizes the award package, including the Price Negotiation Memorandum and Award Summary Documentation.	07/17/14
- CO sends final award package to the DOI Solicitor's Office for legal review.	07/18/14
- CO sends Congressional Notice to the IBC Public Affairs Office.	07/25/14
- Contract Awarded	07/31/14

ANNEX THREE – Evaluation Criteria

- **Technical Approach** – Offerors must demonstrate a thorough understanding of the tasks and effort required to produce and publish a USEITI report. Offerors should address their unique approach to accomplishing the work set forth in the solicitation and include new and innovative methods using state-of-the-art technology. Offerors shall provide a detailed management plan explaining schedules, project-management, quality assurance procedures, and assurances for on time completion within the allotted budget. A quality control plan should also be included.
- **Qualifications/Experience** – Offerors should address the qualifications of the firm. In addition, offerors should provide one-page resumes displaying the qualifications, experience, operational knowledge, and skills of key personnel who will work on the project.
- **Past Performance** – Offerors shall provide past performance information for past or similar work including a list of clients with contact information for current projects and projects completed within the past two years. Include any special awards for past or similar work.
- **Price** – Offerors shall provide a complete, detailed breakdown of all labor hours and travel expense estimates within the price proposal.